

UNIFORM NONPARENT CUSTODY AND VISITATION ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM NONPARENT CUSTODY AND VISITATION ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Nonparent Custody and Visitation Act.

SECTION 2. DEFINITIONS. In this [act]:

- (1) “Child” means an unemancipated individual who is less than [18] years of age.
- (2) “Compensation” means wages or other remuneration paid in exchange for care of a child. The term does not include reimbursement of expenses for care of the child, including payment for food, clothing, and medical expenses.
- (3) “Consistent caretaker” means a nonparent who meets the requirements of Section 4(b).
- (4) “Custody” means physical custody, legal custody, or both. The term includes joint custody or shared custody.
- (5) “Harm to a child” means significant adverse effect on a child’s physical, emotional, or psychological well-being.
- (6) “Legal custody” means the right to make significant decisions regarding a child, including a decision regarding a child’s education, health care, and scheduled activity.
- (7) “Nonparent” means an individual other than a parent of the child. The term includes a grandparent, sibling, or stepparent of the child.
- (8) “Parent” means an individual recognized as a parent under law of this state other than this [act].
- (9) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
- (10) “Physical custody” means living with a child and exercising day-to-day care of the child.

(11) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(13) “Substantial relationship” means a relationship between a nonparent and child that meets the requirements of Section 4(c).

(14) “Visitation” means the right to spend time, which may include an overnight, with a child who is living with another person.

SECTION 3. SCOPE.

(a) Except as otherwise provided in subsection (b), this [act] applies to a proceeding in which a nonparent seeks custody or visitation.

(b) This [act] does not apply to a proceeding:

(1) between nonparents, unless a parent is a party to the proceeding;

(2) pertaining to custody of or visitation with an Indian child as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. Sections 1901 through 1963[, as amended], to the extent that the proceeding is governed by the Indian Child Welfare Act of 1978[, as amended]; and

(3) pertaining to a child who is the subject of an ongoing proceeding in any state[regarding guardianship of the person or] regarding an allegation by a government entity that the child is abused, neglected, dependent, or otherwise in need of care.

[(c) A nonparent may not maintain a proceeding under this [act] for custody or visitation of a child solely because the nonparent served as a foster parent of the child.]

(d) An individual whose parental rights concerning a child have been terminated may not maintain a proceeding under this [act] concerning the child.

(e) Relief under this [act] is not available during the effective period of a custody or visitation order [entered under the [cite to this state's Uniform Deployed Parents Custody and Visitation Act] or other order] dealing with custody of or visitation with a child of a deployed parent. A custody or visitation order entered before a parent was deployed remains in effect unless modified by order of the court.

Legislative Note: *In subsection (b)(3), the phrase “guardianship of the person” is in brackets to give the enacting state an option to include the phrase in the list of proceedings that are excluded from coverage under the act. If a state’s guardianship law allows a court to order visitation to a nonparent, the proceedings involving guardianship of the person of a child should be included in the list of proceedings not covered by this act. If the guardianship law of the state does not permit a court to order visitation with a child who is the subject of a guardianship proceeding, the phrase “guardianship of the person” should not be included in subsection (b)(3) to allow a court to order visitation with a child who is the subject of a guardianship proceeding.*

Subsection (c) is in brackets to give the enacting state the option of not including this provision if state law recognizes the right of a former foster parent to seek visitation with a child.

In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in subsection (b)(2).

SECTION 4. REQUIREMENTS FOR ORDER OF CUSTODY OR VISITATION.

(a) A court may order custody or visitation to a nonparent if the nonparent proves that:

(1) the nonparent:

(A) is a consistent caretaker under subsection (b); or

(B) has a substantial relationship under subsection (c) and the denial of

custody or visitation would result in harm to the child; and

(2) an order of custody or visitation to the nonparent is in the best interest of the child.

(b) A nonparent is a consistent caretaker under this [act] if the nonparent without expectation of compensation:

(1) lived with the child for not less than 12 months, unless the court finds good cause to accept a shorter time;

(2) regularly exercised care of the child;

(3) made day-to-day decisions regarding the child solely or in cooperation with an individual having physical custody of the child; and

(4) established a bonded and dependent relationship with the child with the express or implied consent of a parent of the child, or without the consent of a parent if no parent has been able or willing to perform parenting functions.

(c) A nonparent has a substantial relationship with a child under this [act] if:

(1) the nonparent:

(A) is an individual with a familial relationship with the child by blood or law; or

(B) formed a relationship with the child without expectation of compensation; and

(2) a significant emotional bond exists between the nonparent and the child.

SECTION 5. PRESUMPTION FOR PARENTAL DECISION.

(a) In an initial proceeding under this [act], a decision by a parent regarding a request for custody or visitation by a nonparent is presumed to be in the best interest of the child.

(b) A nonparent has the burden to rebut the presumption under subsection (a) by clear-and-convincing evidence of the facts required by Section 4(a). Proof of unfitness of a parent is not required to rebut the presumption under subsection (a).

(c) Except as otherwise provided in subsection (d) or Section 15, if a nonparent rebuts the presumption under subsection (a) in an initial proceeding, the presumption remains rebutted for further proceedings.

(d) If a nonparent who has been granted an order of visitation requests an order of custody in a modification proceeding, the nonparent must rebut the presumption under subsection (a) as in an initial proceeding.

SECTION 6. COMMENCEMENT OF PROCEEDING; JURISDICTION. A nonparent may commence a proceeding under this [act] by filing a [petition] under Section 7 in the court having jurisdiction to determine custody or visitation under the [Uniform Child Custody Jurisdiction and Enforcement Act] [Uniform Child Custody Jurisdiction Act].

Legislative Note: *The applicable statute should be identified. As of 2018, 49 states and the District of Columbia have enacted the Uniform Child Custody Jurisdiction and Enforcement Act. Massachusetts has not adopted the Uniform Child Custody Jurisdiction and Enforcement Act, but it has adopted the Uniform Child Custody Jurisdiction Act.*

SECTION 7. VERIFIED [PETITION].

(a) A nonparent who files a [petition] for custody or visitation under this [act] shall verify the [petition] under penalty of perjury and allege facts showing that:

(1) the nonparent meets the requirements of a consistent caretaker of the child under Section 4(b); or

(2) has a substantial relationship with the child under Section 4(c) and that denial of custody or visitation would result in harm to the child.

(b) A verified [petition] under subsection (a) must state the relief sought and must allege specific facts, showing:

(1) the duration and nature of the relationship between the nonparent and the child, including the period, if any, the nonparent lived with the child and the care provided for

the child;

(2) the content of any agreement between the parties to the proceeding regarding caretaking for the child and custody, visitation, or other contact with the child;

(3) a description of any previous attempt by the nonparent to obtain custody, visitation, or other contact with the child;

(4) the extent to which the parent is willing to permit the nonparent to have custody, visitation, or other contact with the child;

(5) information about compensation or expectation of compensation provided to the nonparent in exchange for care of the child;

(6) information required to establish the jurisdiction of the court under the [Uniform Child Custody Jurisdiction and Enforcement Act] [Uniform Child Custody Jurisdiction Act];

(7) the reason the requested custody or visitation is in the best interest of the child, applying the factors in Section 12; and

(8) if the nonparent alleges a substantial relationship under Section 4(c), the reason denial of custody or visitation to the nonparent would result in harm to the child.

(c) If an agreement described in subsection (b)(2) is in a record, the nonparent must attach a copy of the agreement to the [petition].

Legislative Note: In subsection (b)(6), the applicable statute should be identified. As of 2018, 49 states and the District of Columbia have enacted the Uniform Child Custody Jurisdiction and Enforcement Act. Massachusetts has not adopted the Uniform Child Custody Jurisdiction and Enforcement Act, but it has adopted the Uniform Child Custody Jurisdiction Act.

SECTION 8. SUFFICIENCY OF [PETITION].

(a) The court shall determine based on the [petition] under Section 7 whether the nonparent has pleaded a prima facie case that the nonparent:

(1) is a consistent caretaker under Section 4(b); or

(2) has a substantial relationship under Section 4(c) and that denial of custody or visitation would result in harm to the child.

(b) If the court determines that the [petition] fails to plead a prima facie case under subsection (a), the court shall dismiss the [petition].

SECTION 9. NOTICE. On commencement of a proceeding under this [act], the nonparent shall give notice to each:

- (1) parent of the child who is the subject of the proceeding;
- (2) person having custody;
- (3) individual having court-ordered visitation; and
- (4) attorney, guardian ad litem, or similar representative appointed for the child.

SECTION 10. APPOINTMENT; INTERVIEW OF CHILD; COURT SERVICES.

In the manner and to the extent authorized by law of this state in a family law proceeding other than under this [act], the court in a proceeding under this [act] may:

- (1) appoint an attorney, guardian ad litem, or similar representative for the child;
- (2) interview the child;
- (3) require the parties to participate in mediation or another form of alternative dispute resolution between the parties, but a party who has been the victim of domestic violence, sexual assault, stalking, or other crime against the individual by another party to the proceeding may not be required to participate in mediation or another form of alternative dispute resolution [unless reasonable procedures are in place to protect the party from a risk of harm, harassment, or intimidation];
- (4) order an evaluation, investigation, or other assessment of the child's circumstances

and the effect on the child of ordering or denying the requested custody or visitation or modifying the order; and

(5) allocate payment between the parties of a fee for a service ordered under this section.

Legislative Note: *The brackets in paragraph (3) should be removed and the phrase “unless reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation” should be included in the paragraph in a state that requires mediation of custody and visitation cases, including a case involving an allegation of domestic violence. If a state does not require mediation in those circumstances, delete the phrase and the brackets.*

SECTION 11. EMERGENCY ORDER. On finding that a party or a child who is the subject of a proceeding under this [act] is in danger of imminent harm, the court may expedite the proceeding and may issue an emergency order.

SECTION 12. BEST INTEREST OF CHILD. In determining whether an order of custody or visitation under this [act] to a nonparent is in the best interest of a child, the court shall consider:

- (1) the nature and extent of the relationship between the child and the parent;
- (2) the nature and extent of the relationship between the child and the nonparent;
- (3) the views of the child, taking into account the age and maturity of the child;
- (4) past or present conduct by a party or individual living with a party which poses a risk to the physical, emotional, or psychological well-being of the child;
- (5) the likely impact of the requested order on the relationship between the child and the parent;
- (6) the applicable factors in [cite to this state’s law other than this [act] pertaining to factors considered in custody or visitation disputes between parents]; and
- (7) any other factor affecting the best interest of the child.

Legislative Note: *The applicable factors in paragraph 6 would include factors used to decide “parenting time” or a similar term used in the state’s statutes.*

[SECTION 13. PRESUMPTION ARISING FROM CHILD ABUSE, CHILD NEGLECT, DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.]

(a) In a proceeding under this [act], the court shall presume that ordering custody or visitation to a nonparent is not in the best interest of the child if the court finds that the nonparent, or an individual living with the nonparent, has committed child abuse, child neglect, domestic violence, sexual assault, stalking, or comparable conduct in violation of law of this state or another state.

(b) A finding that conduct specified in subsection (a) occurred must be based on:

(1) evidence of a conviction in a criminal proceeding or final judgment in a civil proceeding; or

(2) proof by a preponderance of the evidence.

(c) A nonparent may rebut the presumption under subsection (a) by proving by clear-and-convincing evidence that ordering custody or visitation to the nonparent will not endanger the health, safety, or welfare of the child.]

Legislative Note: This act is intended to provide a presumption against granting custody or visitation to a nonparent if the nonparent or a person living with the nonparents has committed acts of domestic violence or related conduct. This goal can be accomplished by adopting Section 13, or, in the alternative, amending existing state law concerning presumptions and rebuttal of presumptions applicable to a dispute between parents. The same types of presumptions and criteria for rebuttal of presumptions would apply to nonparents seeking custody or visitation.

SECTION 14. ORDER OF CUSTODY OR VISITATION.

(a) In a proceeding under this [act] in which a nonparent seeks custody, the court may order:

(1) sole or primary custody to the nonparent;

(2) joint custody to the nonparent and a parent or other party; or

(3) visitation to the nonparent.

(b) In a proceeding under this [act] in which a nonparent seeks only visitation, the court may not order custody to the nonparent seeking visitation.

SECTION 15. MODIFICATION OF CUSTODY OR VISITATION.

(a) On [motion], the court may modify a final order granting custody or visitation under this [act] on a showing by a preponderance of the evidence that:

(1) a [substantial] [material] and [continuing] change in circumstance has occurred relevant to the custody or visitation of the child; and

(2) modification is in the best interest of the child under Section 12.

(b) Except as otherwise provided in subsections (c) and (d), if a nonparent has rebutted the presumption under Section 5 in an initial proceeding, the presumption remains rebutted.

(c) If a [motion] is filed to modify an order of visitation under this [act] to obtain an order of custody, the nonparent must rebut the presumption under Section 5.

(d) On agreement of the parties, the court may modify an order of custody or visitation, unless the court finds that the agreement is not in the best interest of the child.

Legislative Note: *In subsection (a)(1), a state should use the words in state law governing modification of custody or parenting time in proceedings between parents.*

[SECTION 16. FINDINGS OF FACT AND CONCLUSIONS OF LAW. When issuing a final order of custody or visitation, the court shall make findings of fact and conclusions of law on the record in support of its decision or, if the [petition] is dismissed under Section 8, state the reasons for the dismissal.]

Legislative Note: *A state should omit this section if the requirement or lack of requirement of making findings of fact and conclusions of law is governed by court rule rather than statute or the state requires findings of fact and conclusions of law in all proceedings involving family law.*

SECTION 17. EFFECT OF ADOPTION OF CHILD BY RELATIVE OR STEPPARENT. If a child is adopted by a relative, including a stepparent, of the child, an order of custody or visitation under this [act] to a nonparent remains in effect and is not changed by the adoption unless modified, after notice to all parties to the proceeding, by the court that entered the order or the court that granted the adoption.

SECTION 18. EXPENSE OF FACILITATING VISITATION. In a proceeding under this [act], the court may issue an order allocating responsibility between the parties for payment of the expense of facilitating visitation, including the expense of transportation.

SECTION 19. LAW GOVERNING CHILD SUPPORT. The authority of a court to award child support payable to or by a nonparent is governed by law of this state other than this [act].

[SECTION 20. EQUITABLE RIGHT OR REMEDY. This [act] does not preclude the recognition of an equitable right or remedy for a de facto parent under law of this state other than this [act].]

Legislative Note: *If state law treats a de facto parent as a nonparent, but recognizes greater rights for the de facto parent than those established by this act on equitable grounds, the state should enact this section.*

If state law refers to “psychological parent” or an individual acting “in loco parentis” rather than “de facto parent”, the alternate term should be substituted.

SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not

modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 23. TRANSITIONAL PROVISION. This [act] applies to a proceeding commenced before, on, or after [the effective date of this [act]] in which a final order has not been entered.

[SECTION 24. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

***Legislative Note:** Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.*

SECTION 25. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

***Legislative Note:** When enacting this act, a state should repeal: (1) general statutes, if any, regarding visitation for a grandparent, stepparent, sibling, and other nonparent; and (2) statutes, if any, regarding a custody dispute between a nonparent and a parent.*

When enacting this act, a state should not repeal: (1) the state's Uniform Deployed Parents Custody and Visitation Act or other state law dealing with custody of and visitation with a child of a deployed parent; (2) law regarding guardianship of a minor; (3) law regarding a child in custody of the state, including a child in foster care; or (4) law providing a de facto parent with the rights of a legal parent.

SECTION 26. EFFECTIVE DATE. This [act] takes effect